

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. WCC-105

DHX, INC.

v.

MATSON NAVIGATION COMPANY AND SEA-LAND SERVICE, INC.

Decided: January 21, 2004

This case involves a challenge by DHX, Inc. (DHX), a freight forwarder, to the reasonableness of certain rates and practices of Matson Navigation Company and Sea-Land Service, Inc., now known as Horizon Lines, Inc. (Horizon), two water carriers in the noncontiguous domestic trade between the United States mainland and Hawaii (defendants). The procedural schedule in this proceeding was revised in decisions served on October 16, and December 5, 2003. DHX's opening statement was filed on October 30, 2003, and the reply statements were filed on December 23, 2003. DHX's rebuttal statement is due on January 26, 2004, under the revised schedule.

On January 9, 2004, Horizon tendered a copy of the public version of its reply for filing with the Board. Horizon states that, although it filed the Highly Confidential Version of its reply on December 23, 2003, it agreed to allow DHX's counsel time to review the draft public version of its pleading to ensure that DHX agreed with Horizon's decisions concerning the masking of potentially sensitive commercial information. Because the review process is now complete, Horizon seeks permission to file the public version of its reply at this time. According to Horizon, neither DHX nor Matson opposes the request.

In a motion filed on January 13, 2004, DHX requests that the due date for filing its rebuttal statement be extended until February 3, 2004. DHX submits that a brief extension of time is necessary because the reply statements filed by the defendants contained substantial contentions regarding DHX's finances and activities. DHX submits that the input and assistance of DHX personnel will be needed to respond properly to those arguments. Because public versions of the replies of Horizon and Matson assertedly were not available until January 5, and January 6, 2004, respectively, DHX submits that input from its personnel cannot be provided in sufficient time to meet the January 26, 2004 due date for filing its rebuttal statement. According to DHX, the defendants have consented to the requested extension of time.

Deferral of the filing of a public version of Horizon's reply statement was not authorized by the Board. Indeed, the decision served in this proceeding on October 16, 2003, specifically denied a

request by DHX for the parties to defer the filing of public versions of their evidentiary submissions until 20 days after DHX's rebuttal statement is filed. That decision noted that the request was contrary to the Board's policy of requiring that parties file a public version of their submissions simultaneously with any Highly Confidential or Confidential Version they might also choose to file. See, e.g., Procedures to Expedite Resolution of Rail Rate Challenges to be Considered Under the Stand-Alone Cost Methodology, STB Ex Parte No. 638, slip op. at 9-10 (STB served Apr. 3, 2003).

Although deferral of the filing of the public version of Horizon's reply statement does not comport with the guidance in the October 16 decision, the pleading will be accepted for filing at this time to complete Horizon's reply filing. Moreover, under the circumstances here, a brief extension of time until February 3, 2004, will be granted so that DHX will have sufficient time to prepare its rebuttal statement. No further extension of time is contemplated. If DHX files a Highly Confidential or Confidential Version of its rebuttal statement, the statement must be accompanied by a public version.

It is ordered:

1. The public version of Horizon's reply statement is accepted.
2. DHX's motion to extend the remainder of the procedural schedule in this proceeding is granted and the due date for filing its rebuttal statement is further extended until February 3, 2004.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary